

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 07 C 2900
	)	
SHO-DEEN INC., and SHO-DEEN	)	Judge Guzman
CONSTRUCTION COMPANY, L.L.C.,	)	
	)	
Defendants.	)	

**CONSENT DECREE**

WHEREAS, the plaintiff, the United States of America, on behalf of the United States Army Corps of Engineers (the "Corps of Engineers"), filed a complaint against defendants, Sho-Deen Inc., and Sho-Deen Construction Company, LLC, alleging that defendants violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a);

WHEREAS, the complaint alleges that defendants violated CWA Section 301(a) by causing fill and/or dredged material to be discharged into waters of the United States located in unincorporated Geneva, Kane County, Illinois at Mill Creek south of Keslinger Road in a residential development known as "Mill Creek" ("the site");

WHEREAS, the alleged violations occurred in conjunction with the installation of a bridge, commonly known as the "Dobson Lane Bridge," over Mill Creek at the site;

WHEREAS, the complaint alleges that the discharge of fill and/or dredged material was without authorization by the Corps of Engineers and is more fully described in the complaint in this case;

WHEREAS, the complaint seeks: (1) an order enjoining the defendants from discharging any pollutant into navigable waters of the United States without the required federal permit; (2) an order requiring defendants to restore the impacted wetland at the site; (3) an award to plaintiff of an appropriate civil penalty pursuant to the terms of 33 U.S.C. §§ 1319(b) and 1344 for each day on which each violation occurred; (4) an award to plaintiff for its costs in connection with this action; and (5) an award to plaintiff of such further relief as this court deems just;

WHEREAS, the defendants deny the allegations in the complaint and deny that they violated the CWA;

WHEREAS, the United States and the defendants agree that this Consent Decree does not constitute an admission by defendants of any liability whatsoever;

WHEREAS, this consent decree is intended to constitute a complete and final settlement of the United States' claims under the CWA set forth in the complaint regarding the site;

WHEREAS, the United States and defendants agree that settlement of this case is in the public interest and that entry of this consent decree is the most appropriate means of resolving the United States' damages claims under the CWA against defendants in this case; and

WHEREAS, the court finds that this consent decree is a reasonable and fair settlement of the United States' claims against defendants in this case, and that this consent decree adequately protects the public interest in accordance with the CWA and all other applicable federal law.

THEREFORE, before the taking of any testimony and upon consent of the parties hereto by their authorized representatives, it is hereby ORDERED, ADJUDGED and DECREED as follows:

## **I. Jurisdiction and Venue**

1. This court has jurisdiction over the subject matter of these actions and over the parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. Venue is proper in the Northern District of Illinois pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because the subject property is located in this district, and the causes of action alleged herein arose in this district.

3. The complaint states claims upon which relief can be granted pursuant to Sections 301, 309 and 404 of the CWA, 33 U.S.C. §§ 1311, 1319 and 1344.

## **II. Applicability**

4. The obligations of this consent decree shall apply to and be binding upon defendants, their agents, employees and servants, and successors and assigns and any person, firm, association or corporation who is, or will be, acting in concert or participation with the defendants whether or not such person has notice of this consent decree. In any action to enforce this consent decree defendants shall not raise as a defense the failure of any of their agents, employees, successors or assigns or any person, firm or corporation acting in concert or participation with defendants, to take any actions necessary to comply with the provisions hereof.

5. The transfer of ownership or other interest in the site shall not alter or relieve defendants of their obligations to comply with all of the terms of this consent decree. As a condition to any such transfer, defendants shall reserve all rights necessary to comply with the terms of this consent decree.

### **III. Scope of Consent Decree**

6. This consent decree shall constitute a complete and final settlement of all civil claims for injunctive relief and/or civil penalties alleged in the complaint against defendants under CWA Section 301 for the matters alleged in the complaint.

7. It is the express purpose of the parties in entering this consent decree to further the objectives set forth in CWA Section 101, 33 U.S.C. § 1251. All obligations in this consent decree or resulting from the activities required by this consent decree shall have the objective of causing defendants to achieve and maintain full compliance with, and to further the purposes of, the CWA.

8. This consent decree is not and shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Sections 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, or any other law. Nothing in this consent decree shall limit the ability of the Corps of Engineers to issue, modify, suspend, revoke or deny any individual permit or any nationwide or regional general permit, nor shall this consent decree limit the U.S. Environmental Protection Agency's ("U.S. EPA") ability to exercise its authority pursuant to Section 404(c) of the CWA, 33 U.S.C. § 1344(c).

9. This consent decree in no way affects or relieves defendants of their responsibility to comply with any applicable federal, state, or local law, regulation or permit.

10. This consent decree does not relieve defendants of liability for any violations of the Clean Water Act other than those alleged in the complaint.

11. This consent decree in no way affects the rights of the United States as against any person not a party to this consent decree.

12. The United States reserves any and all legal and equitable remedies available to enforce the provisions of this consent decree and applicable law.

13. Except as provided in paragraphs 1 through 3, nothing in this consent decree shall constitute an admission of fact or law by any party.

#### **IV. Specific Provisions**

##### **Civil Penalties**

14. Defendants shall jointly pay a civil penalty to the United States in the amount of one hundred forty thousand dollars (\$140,000) within 30 days of entry of this consent decree.

15. Defendants shall make the above-referenced payments by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number 2007v000571. Payment shall be made in accordance with instructions, if requested by the defendants, provided to defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of Illinois. Any payments received by the Department of Justice after 3:00 P.M. (Central Time) will be credited on the next business day.

16. Upon payment of the civil penalty required by this consent decree, defendants shall provide written notice to the United States Attorney's Office for the Northern District of Illinois, that such payment was made in accordance with Paragraphs 14 and 15.

17. Civil penalty payments pursuant to this consent decree are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

##### **Restoration, Mitigation and Preservation**

18. Within 30 days of entry of this Consent Decree, defendants shall provide proof to the United States that defendants jointly paid sixty thousand dollars (\$60,000) to "The Fox Valley Land Foundation" ("FVLFF") for mitigation of stream impacts that may have been indirectly caused by the alleged violations. Such proof shall be made by providing a signed certification

from an authorized FVLF representative which states that \$60,000 has been received by the FVLF from the defendants.

### **Permanent Injunction**

19. Defendants and their agents, successors and assigns are permanently enjoined from discharging any pollutant into waters of the United States, unless such discharge complies with the provisions of the CWA and its implementing regulations. Defendants and their agents, successors and assigns, are further permanently enjoined from conducting any construction activities at or on the Dobson Lane Bridge without prior written authorization from the Corps of Engineers. "Prior written authorization" includes a CWA Section 404 permit issued to Kane County which identifies defendants as the contractor or subcontractor.

### **Stipulated Penalties**

20. After entry of this consent decree, if defendants fail to timely fulfill any requirement of the consent decree, including without limitation paragraphs 14, 18 and 19 above, they shall pay a stipulated penalty to the United States for each violation of each requirement of this consent decree as follows:

- |    |  |                    |
|----|--|--------------------|
| A. | For Day 1 up to and including<br>Day 30 of non-compliance  | \$500.00 per day   |
| B. | For Day 31 up to and including Day<br>60 of non-compliance | \$1,000.00 per day |
| C. | For Day 61 and beyond                                      | \$2,000.00 per day |

Such payments shall be made without demand by the United States on or before the last day of the month following the month in which the stipulated penalty accrued.

## **VI. Addresses**

21. All notices and communications required under this consent decree shall be made to the parties through each of the following persons and addresses:

A. To the Corps of Engineers:

Mitchell A. Isoe  
Chief, Regulatory Branch  
111 N. Canal  
Suite 600  
Chicago, Illinois 60606

B. To the United States Department of Justice

Kurt N. Lindland  
Assistant United States Attorney  
219 S. Dearborn St.  
5th Floor  
Chicago, Illinois 60604

C. To Defendants:

Sho-Deen, Inc.  
Sho-Deen Construction Company, LLC  
17 North First Street  
Geneva, Illinois 60134

with a copy to:

James R. Figliulo  
Figliulo & Silverman  
10 S. LaSalle St., Suite 3600  
Chicago, Illinois 60603

## **VII. Costs of Suit**

22. Each party to this consent decree shall bear its own costs and attorneys' fees in this action. Should defendants subsequently be determined by the court to have violated the terms or conditions of this consent decree, defendants shall be liable for any costs or attorneys' fees incurred by the United States in any action against defendants for noncompliance with or enforcement of this consent decree.

## **VIII. Public Comment**

23. The parties acknowledge that after the lodging and before the entry of this consent decree, final approval by the United States is subject to the requirements of 28 C.F.R. § 50.7, which provides for public notice and comment. The United States reserves the right to withhold or withdraw its consent to the entry of this consent decree if the comments received disclose facts which lead the United States to conclude that the proposed judgment is inappropriate, improper, or inadequate. Defendants agree not to withdraw from, oppose entry of, or to challenge any provision of this consent decree, unless the United States has notified defendants in writing that it no longer supports entry of the consent decree.

## **IX. Continuing Jurisdiction of the Court**

24. This court shall retain jurisdiction over this action in order to enforce or modify the consent decree consistent with applicable law or to resolve all disputes arising hereunder as may be necessary or appropriate for construction or execution of this consent decree. During the pendency of the consent decree, any party may apply to the court for any relief necessary to construe and effectuate the consent decree.



**X. Final Judgment**

25. Upon its entry by the court, this consent decree shall have the force and effect of a final judgment.

IT IS SO ORDERED.

Dated and entered this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
United States District Judge

ON BEHALF OF THE UNITED STATES:

PATRICK J. FITZGERALD  
United States Attorney

By:

KURT N. LINDLAND  
Assistant United States Attorney  
219 South Dearborn Street  
Chicago, Illinois 60604  
(312) 353-4163

Dated: \_\_\_\_\_

ON BEHALF OF DEFENDANTS:

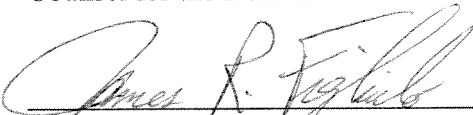
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SHO-DEEN CONSTRUCTION COMPANY LLC

Dated: 3-26-08

 v.p.  
SHO-DEEN INC.

Dated: 3-26-08

Counsel for the Defendants

  
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